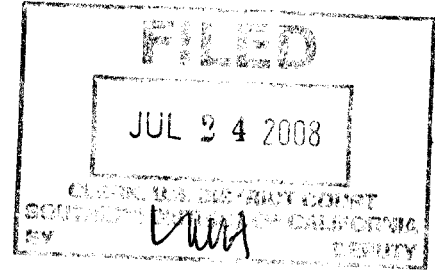


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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Magistrate Case No. 08MJ2141
	)	
Plaintiff,	)	
	)	
v.	)	<b>STIPULATION OF FACT AND JOINT</b>
	)	<b>MOTION FOR RELEASE OF</b>
JOEL GARCIA-HERNANDEZ,	)	<b>MATERIAL WITNESS(ES) AND</b>
	)	<b><u>ORDER THEREON</u></b>
Defendant.	)	
	)	<b>(Pre-Indictment Fast-Track Program)</b>

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and James P. Melendres, Assistant United States Attorney, and defendant JOEL GARCIA-HERNANDEZ, by and through and with the advice and consent of defense counsel, Joseph M. McMullen, Federal Defenders of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

//

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **August 13, 2008**.

6           4. The material witness, Nohemi Bautista-Lucatero, in this case:

7               a. Is an alien with no lawful right to enter or remain in the United States;

8               b. Entered or attempted to enter the United States illegally on or about  
9 July 12, 2008;

10              c. Was found in a vehicle driven by defendant at the Tecate, California, Port of  
11 Entry (POE), and that defendant knew or acted in reckless disregard of the fact that she was an alien  
12 with no lawful right to enter or remain in the United States;

13              d. Was paying or having others pay on her behalf an unknown amount to others  
14 to be brought into the United States illegally and/or transported illegally to her destination therein;  
15 and,

16              e. May be released and remanded immediately to the Department of Homeland  
17 Security for return to her country of origin.

18           5. After the material witness is ordered released by the Court pursuant to this stipulation  
19 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
20 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24               b. The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness to the Department of Homeland  
11 Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
15 United States Attorney

16 Dated: July 24, 2008.

17 James P. Melendres  
18 JAMES P. MELENDRES  
19 Assistant United States Attorney

20 Dated: 7/23/2008.

21 Joseph M. McMullen  
22 JOSEPH M. McMULLEN  
23 Defense Counsel for  
24 JOEL GARCIA-HERNANDEZ

25 Dated: 7/23/2008.

26 Joel Garcia-Hernandez  
27 JOEL GARCIA-HERNANDEZ  
28 Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 7/24/08

  
United States Magistrate Judge